

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 27, 2011

In the Matter of D. MCCALL, Minor.

No. 303209
Wayne Circuit Court
Family Division
LC No. 10-496646

Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), and (j). For the reasons set forth below, we affirm.

This Court reviews the trial court's findings of fact in termination proceedings for clear error. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5).

The minor child died before respondent filed this appeal. Respondent, therefore, has no remedy as it relates to this child. The trial court's opinion, however, may have consequences to respondent in the event he has children in the future. See MCL 712A.19b(3)(k) and (l). Accordingly, we address the issues raised on appeal.

The trial court did not clearly err when it found clear and convincing evidence to terminate respondent's parental rights to the child pursuant to MCL 712A.19b(3)(b)(i), (g), and (j). The child was six months old when he was brought to the emergency room for pneumonia and doctors found he had broken ribs and a broken femur. Respondent and the child's mother had no explanation for the injuries. The medical expert witnesses testified that the infant's injuries could not have occurred in the ordinary course of care and were consistent with abuse. The child's mother testified that she, respondent, and, occasionally, her grandmother were the only people who cared for the baby. She testified that she did not injure the child and did not believe her grandmother inflicted the injuries. The mother also testified that, when she confronted respondent about whether he hurt the child, respondent became very angry, he slammed the apartment door so hard that it fell off its hinges, and he choked and bit her. The mother stated that this was the only occasion on which respondent was violent, although he

showed frustration with the child's crying on several occasions. The mother had two other children, and no allegations of physical abuse were ever made with regard to these children. Respondent presented several character witnesses who testified that he was a good father and that they never saw him behave in a violent manner.

Based on the testimony presented at trial, the court ruled that the child suffered from physical abuse inflicted by respondent. This Court will not substitute its opinion for the opinion of the trial court regarding the credibility of the witnesses. MCR 2.613(C); MCR 3.902(A); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court had the opportunity to observe the witnesses and hear their testimony. None of the witnesses provided an explanation for how the injuries to the child occurred. The trial court believed the injuries were not inflicted by the child's mother or great-grandmother. Respondent was the only other person caring for the child and he reacted violently when confronted by the child's mother.

The fact that respondent was not criminally charged in the child's abuse is not relevant in these proceedings, which are civil in nature. *In re MU*, 264 Mich App 270, 279-280; 690 NW2d 495 (2004). The trial court based its finding that respondent inflicted the child's injuries on a variety of factors, including respondent's frustration with the baby's crying, his violent outburst when he was confronted by the mother about the child's injuries, and his choice not to provide any explanation of the injuries. Furthermore, the trial court did not clearly err when it found that the child would not be safe if returned to respondent's home. The trial judge specifically stated that he was concerned about even more significant injury to the child in the future.

Respondent also argues he should have been provided services toward reunification with his child. MCL 722.638 requires the petitioner to file a petition to terminate at the initial disposition when a determination is made that a parent has abused the child and the abuse included severe physical abuse. Pursuant to MCL 712A.19a(2)(a), the petitioner is not required to make reasonable efforts to reunify a respondent in these circumstances. Accordingly, we hold that the trial court did not clearly err.

Moreover, the trial court did not clearly err in its best-interest determination. MCL 712A.19b(5). The child deserved to live in a home in which he was safe from harm and the court correctly ruled that he should not be placed in respondent's care.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause